

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO:

Darren Mickell
an individual.

Plaintiff,

vs.

Bert Bell/Pete Rozelle
NFL Players Retirement Plan,
a welfare benefit plan,

Defendant,

COMPLAINT

Plaintiff, DARREN MICKELL (“Plaintiff” and/or “Mr. Mickell”), through his undersigned counsel, files this Complaint against Defendant, BERT BELL/PETE ROZELLE NFL PLAYERS RETIREMENT PLAN (“Defendant” and/or “Defendant Plan”), and states as follows:

Jurisdiction and Venue

1. This is a civil action arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. (“ERISA”).
2. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and specifically 29 U.S.C. §1132(e)(1).
3. The ERISA statute provides a mechanism for administrative or internal appeal of benefit denials. In this case, those avenues have been actually or deemed exhausted, and this matter is now properly before this Court for judicial review.

4. Venue is proper in the United States District Court for the Southern District of Florida, pursuant to 28 U.S.C. §1391 and specifically 29 U.S.C. §1132(e)(2), because an action may be brought in the district where the plan is administered, where the breach took place, or where the defendant resides or may be found. The breach took place and the Defendant can be found in the Southern District of Florida.

Nature of Action

5. This action seeks an award of football degenerative T&P benefits to Plaintiff, Darren Mickell, pursuant to an employee welfare benefit plan (“the Plan”).¹ ERISA applies to this action because the Plan constitutes an employee welfare benefit plan as defined by 29 U.S.C. § 1002(1). Plaintiff’s coverage under the Plan made him a participant in the Plan pursuant to 29 U.S.C. § 1002(7).

Parties

6. Mr. Mickell is a former professional football player who played in the National Football League (“NFL”) for nine seasons.

7. At all times relevant hereto, Plaintiff, Mr. Mickell has been a resident and citizen of the State of Florida.

8. At all times relevant hereto, Mr. Mickell was a participant in the Plan as a benefit incident to playing in the NFL. The Plan constituted an “employee welfare benefit plan” as defined by U.S.C. § 1002(1) and Plaintiff, Darren Mickell’s, coverage under the Plan made him a “participant” in the Plan pursuant to U.S.C. § 1002(7).

9. At all times relevant hereto, the NFL provided eligibility to receive monthly T&P benefits to any of its active players or inactive vested players, including Plaintiff, Darren

¹ A copy of the Policy document administratively produced by the Bert Bell/Pete Rozelle NFL Player Retirement Plan is attached hereto as Exhibit 1. This document will be referred to as “the Plan” herein, however, it is unknown at this time whether this is the complete and/or correct formal plan document at issue in this lawsuit.

Mickell, through the Plan. T&P benefits were awarded to any active player or inactive vested player determined to be totally and permanently disabled, which defendant Plan defined as:

5.2 Determination of Total and Permanent Disability.

General Standard. An Eligible Player who is not receiving monthly retirement benefits under Article 4 or Article 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become totally disabled to the extent that he is substantially prevented from, or substantially unable to engage in any occupation or employment for remuneration or profit, but expressly excluding any disability suffered while in the military service of any country, and (2) that such condition is permanent. The educational level and prior training of a Player will not be considered in determining whether such Player is “unable to engage in any occupation or employment for remuneration or profit.” A Player will not be considered to be able to engage in any occupation or employment for remuneration or profit within the meaning of this Section 5.2 merely because, such person is employed by the League or an Employer, manages personal, or family investments, is employed by or associated with a charitable organization, is employed out of benevolence, or receives up to \$30,000 per year in earned income. A disability will be deemed to be “permanent” if it has persisted or is expected to persist for at least twelve months from the date of its occurrence, excluding any reasonably possible recovery period.

10. As a participant in the Plan, Mr. Mickell is entitled to receive disability benefits under the Plan if he meets the definition of Disability.

Statement of Facts

11. Mr. Mickell played in the NFL, from 1992 to 2001, for several teams including the Kansas City Chiefs, the New Orleans Saints, the San Diego Chargers, and the Oakland Raiders.

12. During his NFL career, and as the direct result of playing football in the NFL, Mr. Mickell sustained multiple, repeated impacts to his head, skeletal system, and joints.

13. Mr. Mickell played all of his NFL seasons as a defensive end. Over his career he sustained multiple serious injuries from repeated collisions with on the football field.

14. Mr. Mickell's first significant injury occurred in 1994 when while playing for Kansas City, he injured both knees.

15. During the 1994 season, the team physicians focused on alleviating Mr. Mickell's pain and keeping him on the field. At the end of the season both Mr. Mickell's knees required surgery.

16. Prior to the surgery, Mr. Mickell was given an injection in his back, which he understood would allow him to remain awake throughout the entire procedure. However, a mistake was made and Mr. Mickell was put to sleep for the surgery. Upon awakening, his back pain was worse than his knee pain. He was treated for both issues with pain management treatments and continued to play in the NFL.

17. Subsequently, Mr. Mickell suffered additional injuries to his right shoulder while playing football for the New Orleans Saints and as a result, in 1996 Mr. Mickell had to undergo surgery on his right shoulder. He continued to suffer pain following his surgery.

18. In 1999, he injured his left hip while playing for San Diego Chargers. His hip was drained several times, but the pain never resolved and became worse as he continued to play.

19. Throughout the last two years of his career Mr. Mickell was given cortisone shots and other pain numbing injections to alleviate the severe and chronic pain in his back, knees and hips; and he was also prescribed inflammatory medications to be taken daily.

20. The medication and injections afforded Mr. Mickell only very temporary and minor relief, and by the end of 2000 he was forced to retire from football due to his significant pain and limitations.

21. Mr. Mickell's career ended before the implementation of more stringent NFL rules designed to protect a player from head injuries.

22. Mr. Mickell was subjected to numerous sub-concussive blows to the head due to his position on the field. On multiple occasions Mr. Mickell suffered concussive blows to his head and missed plays because of his cognitive problems. Several times during his career Mr. Mickell had difficulty answering questions after sustaining a blow to the head.

23. Mr. Mickell began to experience cognitive deficiencies. He had noticeable short term memory loss, great difficulty staying focused, problems controlling his emotions and anger, and chronic headaches. He has difficulty sleeping and often wakes up in the middle of the night due to nightmares. He has become withdrawn from his family and friends. Additionally, Mr. Mickell has issues with controlling his temper, causing his family great concern that he may become violent and hurt himself or someone else.

24. Prior to beginning his NFL career, Mr. Mickell had no such issues.

25. After leaving the NFL, Mr. Mickell could not maintain work in any consistent capacity due to daily, constant headaches, as well as severe pain and limitations in both shoulders; chronic, stabbing pain down his back; constant hip pain; perpetual aches in both knees, cognitive deficiencies, and severe major depression and mood swings.

26. Over the years his pain continued to have worsened and Mr. Mickell had great difficulty with physical, cognitive and emotional functioning.

27. At the time of his Application for Disability, as a direct result of injuries suffered while playing football for the NFL, Mr. Mickell had sustained the following injuries and suffered from the following conditions and diagnoses: Cervical and lumbar myofascial pain; chronic headaches, traumatic brain injuries with subsequent chronic posttraumatic headaches and cognitive deficits; Bilateral shoulder myofascial pain; bilateral knee myofascial pain; Left hip myofascial pain; bilateral joint effusions and signal changes within his patella cartilage and

subchondral bone, consistent with patella chondromalacia patellofemoral pain syndrome with severe degenerative changes of his patellofemoral articulation with recurrent effusions; anterior horn medial meniscus tear; grade II/III chondromalacia of his patella with superomedial plica of his left knee; thinning of his articular cartilage of the median ridge of his patella; pectoral's major and latissimus dorsi strain; tubular accumulation of fluid in his subscapular fossa interposed between the posterior-superior surface of the subscapularis muscle and the scapula with multiple septations within the fluid with irregularity of his inferior glenoid labrum; sprain to the anterior talofibular ligament of his left ankle; contusion with lumbosacral paraspinal muscle sprain of his right sacroiliac joint; an acute tear of his posterior joint capsule of his left shoulder joint associated with fluid extending from his joint into his adjacent soft tissue dorsal to the neck of his scapula with a tear of the posterior glenoid labrum with mild edema, posterior subluxation/dislocation of his humeral head with a large joint effusion identified within his glenohumeral joint; a small effusion at his right hip joint with low grade chondromalacia affecting the posterior aspect of his joint; changes at his acromioclavicular joint, consistent with an acromioclavicular separation; arthroscopic subacromial decompression with coracoacromial ligament resection, microscopically distal clavicle excision through anterior portal, anterior-posterior labral debridement, and anterior-superior labral repair, secondary to his left shoulder impingement syndrome and left shoulder acromioclavicular joint arthrosis with osteolysis; central disk herniation at his C6-C7 spinal level with bulging disks at his C4-C5 and C5 C6 spinal levels and straightening of his normal cervical lordosis; a distal biceps femoris muscle and tendon grade II strain with mild patellofemoral compartment osteoarthritic change, early and medial lateral compartment osteoarthritic change, with medial meniscal postsurgical change without recurrent meniscal tear, and a small right knee effusion; mild patellofemoral

compartment osteoarthritic change, early and medial lateral compartment osteoarthritic change; small left knee effusion, 2.0 x 2.9 x 4.3 cm ganglion cyst within the posterior intercondylar region along the posterior margin of his posterior cruciate ligament; and a chronic grade II osteochondral injury in his anterior medial femoral condyle; anterior left acetabular labral nondisplaced tear with moderate bilateral hip osteoarthritic change, greater on the left severe major depression, extreme anxiety and mood swings, and cognitive deficiencies.

28. In April 2012, Mr. Mickell attempted a return to work. He was employed by Freight Handlers, LLC in the Publix Deerfield Distribution Center in Deerfield. Unfortunately, due to his severe physical and cognitive impairments, Mr. Mickell frequently was unable to go to work or had to leave early. Mr. Mickell attempted to alter his work schedule to a four day week, but eventually he was simply unable to continue due to intense physical pain and weakness, as well as his cognitive limitations. Ultimately, after a short lived unsuccessful attempted work effort, Mr. Mickell was forced to cease his employment due to his disabilities.

29. On September 17, 2013, Mr. Mickell submitted his application for Disability benefits under the Plan to Defendant.

30. Defendant obtained a one page letter from the Human Resources department of Freight Handlers, LLC, explaining simply that Mr. Mickell was an employee. The letter from Freight Handlers, LLC, failed to include Mr. Mickell's hourly wage or the number of times he was absent from work or had to leave early as the result of his many ailments.

31. Defendant also had in its possession an Earnings Statement from August 15, 2013 which established that Mr. Mickell would not earn \$30,000.00 by the end of the year.

32. Defendant failed to further inquire from Mr. Mickell or Freight Handlers, LLC whether Mr. Mickell received (or would likely receive) in excess of \$30,000 per year in earned income, which is required to consider Mr. Mickell “employed” under the Plan.

33. Instead, based solely on the one page correspondence confirming employment from Freight Handlers, LLC, on September 27, 2013, Defendant incorrectly denied Mr. Mickell’s claim on the grounds that he was “currently employed,” despite the fact that he earned less than \$30,000.00 annually and he was unable to maintain employment in any occupation.

34. Mr. Mickell timely appealed Defendant’s decision.

35. With his appeal, Mr. Mickell provided clear evidence invalidating the sole basis for the denial of benefits (that he was “employed” under the terms of the Plan).

36. Moreover, Mr. Mickell submitted extensive and compelling additional medical information confirming that he is substantially prevented from and substantially unable to engage in any occupation or employment for remuneration or profit; his condition is permanent; and his total and permanent disability is football degenerative, as it arose out of NFL football activities while he was an active Player with the NFL.

37. Mr. Mickell submitted the medical records of his treating physicians, all of whom spent considerable time examining Mr. Mickell, and all of whom confirmed his inability to engage in employment.

38. On March 31, 2014, Mr. Mickell attended an independent medical examination (“IME”) performed by Craig H. Lichtblau, M.D., (“Dr. Lichtblau”) a Physician who is Board Certified in Physical Medicine and Rehabilitation, and a Fellow of the American Academy of Disability Evaluating Physicians.

39. Dr. Lichtblau performed a comprehensive functional capacity examination, physical examination, and thorough medical records review of the available evidence.

40. Mr. Mickell submitted to Defendant Dr. Lichtblau's comprehensive and independent report which concluded that, due to his multiple medical conditions, Mr. Mickell lacked the functional capacity to engage in gainful employment.

41. Moreover, on April 8th, 14th, and 21st, 2014, Mr. Mickell attended an independent neuropsychological evaluation performed by Mark E. Todd Ph.D. ("Dr. Todd") Licensed Psychologist and Clinical Neuropsychologist.

42. Mr. Mickell also submitted to Defendant the results of the comprehensive and independent report of Dr. Todd, which established that Mr. Mickell suffered from cognitive deficiencies and severe depression. Dr. Todd's report demonstrates that due to his severe mood, behavior, physical problems and cognitive difficulties, Mr. Mickell is prohibited from consistently attending work or completing work requirements.

43. The Plan informed Mr. Mickell that it would require him to undergo additional IMEs by physicians hired by the Plan.

44. Defendant gave Mr. Mickell a mere five day notice to attend an IME more than 70 miles from his residence, despite the fact that Mr. Mickell's disability renders it difficult and painful for him to drive long distances. Mr. Mickell had to request that the IME be rescheduled, as he was unable to secure travel arrangements within the allotted time.

45. Additionally, Mr. Mickell notified the Plan of his intent to have the IMEs videotaped by an independent third party, at his expense, providing legal authority for his position and explaining that he merely desired an accurate account of the examinations.

46. However, the Plan threatened Mr. Mickell with a denial of his claim if he made any attempt to record the evaluation, on his own or through a third party, indicating that it would consider it a refusal to attend the IME.

47. Moreover, the Plan further asserted that Mr. Mickell was not to have any direct contact with the IME physician prior to the examination and it prohibited Mr. Mickell from providing medical documentation to the IME physician.

48. Mr. Mickell participated in the IMEs, expressly reserving his right to dispute the independence of the evaluation and the Plan's reasonableness in investigating his claim.

49. On June 17, 2014, Mr. Mickell submitted to an IME conducted by an orthopedist hired by Plan. Defendant's physician spent less than 20 minutes with Mr. Mickell, during which he performed only a cursory physical examination, before he determined generally that Mr. Mickell could work.

50. Moreover, despite the fact that prior to the IME, Mr. Mickell provided ample medical records to Defendant and specifically requested that all records be sent to the IME, as Mr. Mickell was prohibited from providing any medical information directly, Defendant's hired physician's report indicated that he rendered his opinion without actually reviewing Mr. Mickell's substantial medical evidence, as "there were no records for review. No x-rays or MRIs."

51. Moreover, Defendant's hired physician asserted that he performed a comprehensive full body examination. However, as Mr. Mickell documented (given the Plan's refusal to allow a recording of the examination) and informed Defendant, its physician only performed a very brief examination of Mr. Mickell, during which he spent less than 20 minutes with him and performed only a cursory physical examination.

52. On August 19, 2014, Defendant next required Mr. Mickell to attend an IME by a neurologist hired by Defendant, in Atlanta, Georgia, despite the fact that there are ample independent neurologists in south Florida, where Mr. Mickell resides.

53. Defendant's hired neurologist briefly listened to Mr. Mickell describe his medical history and then gave him a few very short tests. Directly after the examination, Mr. Mickell provided a statement detailing that Defendant's hired physician spent a total of 15 minutes with Mr. Mickell, including the time spent going over his medical history, symptoms, restrictions and limitations.

54. In response to the questions included on the Plan's written questionnaire, Defendant's hired physician responded that "from [a] neurologist standpoint" Mr. Mickell does not have limitations. However, Defendant's physician listed his "Final Clinical Impressions" as "1. Chronic Headache Disorder with mild headache burden;" "2. very mild cognitive impairment;" "3. "significant depression and anxiety disorder which accounts for or contributes to the #2 [cognitive impairment]...."

55. Defendant required Mr. Mickell to undergo an evaluation by a neuropsychologist hired by Defendant, which occurred on August 20, 2014.

56. Defendant's physician conducted a very brief evaluation and incorrectly documented that Mr. Mickell was working with a friend 3 days a week in a job that was not cognitively demanding. Defendant's physician in part relied on this inaccurate assertion to find that Mr. Mickell was not limited from working, despite noting that he suffered from cognitive deficiencies.

57. Upon receipt of Defendant's physician's report, Mr. Mickell promptly advised Defendant that its physician's assertion that he was engaging in part-time work was completely inaccurate,

reiterated that he was not working in any capacity, and explained that he never provided this information to its' hired physician.

58. Further, Defendant's physician acknowledged that Mr. Mickell "may have medical impairment and psychiatric conditions which merit assessment" and further that "[t]here is clinically suggestive evidence [that Darren Mickell] may have a major depressive disorder and a panic disorder, which could impair his ability to secure and maintain successful employment."

59. On September 8, 2014, Defendant denied Mr. Mickell's appeal.

60. In its denial letter, Defendant failed to cite to all of the relevant plan provisions and included only a single paragraph as its rationale for the denial, simply stating that benefits were denied based on the opinions of three reviewing physicians.

61. On March 9, 2015, Mr. Mickell timely appealed Defendant's decision to the Board, providing overwhelming evidence of his disability under the Plan.

62. On April 7, 2015, Mr. Mickell received notice that he would be required to attend an IME in Tampa, Florida, scheduled less than a week later, in a location more than five hours away, and on the opposite side of the state from which Mr. Mickell resides.

63. On April 14, 2015, Mr. Mickell attended an IME performed an orthopaedist hired by Defendant. Defendant physician concluded Mr. Mickell suffered from "1. Cervical DJD early C4-6 with C5-6 central disc herniation and C6-7 central disc herniation. 2. Lumbar broad based disc herniation, L4-5 and L5-S1. 3. Bilateral shoulder moderate ac joint DJD, status post left shoulder distal clavicle resection with early DJD left shoulder. 4. Right hand fifth digit PIP contracture. Range of motion 30-90 degrees. 5. Right hip anterior labral tear per MRI. No obvious degenerative changes per the x-rays with decreased range of motion. 6. Bilateral knee patellofemoral DJD, moderate."

64. Despite his conclusions, the Plan's physician concluded that Mr. Mickell "probably" can perform "light duty" work.

65. On April 15, 2015, Mr. Mickell attended the IME performed by a neurologist hired by Defendant who concluded that Mr. Mickell was "[n]eurologically not presently disabled" from "sedentary work. No heavy lifting." However, Defendant's physician further noted that Mr. Mickell "may have mild cognitive problems" and also that he "needs psychological support."

66. On April 27, 2015, Mr. Mickell submitted to another neuropsychological evaluation with another neurologist hired by Defendant, this time in Durham, North Carolina. As Mr. Mickell contemporaneously documented which was later provided to Defendant, Defendant's hired physician advised Mr. Mickell that she could not complete the evaluation that day and required the interview portion of the evaluation be conducted over the telephone.

67. Defendant's physician concluded that "[b]ased on clinical observation and psychometric data" Mr. Mickell's some of Mr. Mickell's poor scores on testing "may be due to elevated psychiatric distress and pain." Defendant's physician concluded that "from a neurocognitive standpoint, there is insufficient evidence" to conclude that Mr. Mickell cannot be employed full-time. However, Defendant's physician provided that Mr. Mickell's "[p]sychological testing revealed major depression and significant anxiety" and that his "psychiatric dysfunction" warranted a thorough psychological evaluation.

68. On June 10, 2015, Mr. Mickell underwent an IME with Licensed Clinical Psychologist, Peggy Vermont. After conducting a thorough psychological evaluation, records review, and psychological and validity testing, Ms. Vermont concluded that "[b]ased on his history, psychological testing, current interview, and outside records, it appears that Mr. Mickell is suffering from significant mental health symptoms that are impeding his social, emotional, and

occupational functioning. Due [to] the severity of his mood and anxiety symptoms, Mr. Mickell is not deemed employable at this time.” She further concluded that while medication and therapy could provide some improvement in Mr. Mickell’s severe mental health symptoms, it will not likely improve his neurocognitive functioning, as Mr. Mickell’s cognitive deficits are mostly the result of “traumatic brain injuries.”

69. On July 7, 2015, Defendant required that Mr. Mickell travel to Texas to submit to an IME performed by a psychiatrist hired by Defendant. After a brief evaluation of Mr. Mickell, Defendant’s physician opined that Mr. Mickell suffers from “[d]epression and anxiety” and “has psychological difficulties which have an effect on his functioning.” However, he asserted that his psychological difficulties would not preclude him from “some kind of employment.”

70. Mr. Mickell submitted to Defendant an August 11, 2015 report by therapist Rosa Gonzalez, in which she explained that Mr. Mickell is unable to work in “any occupation” and further opined:

Darren is desperate for help. His level of depression and anxiety is palpable and has had a negative impact on his relationships and ability to be productive. He is angry and frustrated by his problems and his inability to get better and move on with his life. At this time he lacks the ability to be a reliable and productive employee.

Based on my review of the medical reports, my conversation with Dr. Nunez, and my personal observations and clinical examination, it is my opinion that as the result of the cognitive and emotional impairments ..., Mr. Mickell is unable to engage in any occupation.

71. On July 8, 2015, Mr. Mickell requested that Defendant provide him with a copy of the seventh IME report requesting it be furnished to him with sufficient time for independent review by Mr. Mickell’s treating physician before its submission to the Board.

72. On July 27, 2015, Mr. Mickell made a second request to Defendant for the seventh IME report as Defendant had yet to provide Mr. Mickell with a copy, despite being in receipt of the report since July 20, 2015.

73. Mr. Mickell did not receive a copy of the report until August 11, 2015, which gave him only four days to review its contents before Defendant was scheduled to review Mr. Mickell's appeal.

74. On August 19, 2015, Defendant affirmed its' decision to deny Mr. Mickell's appeal despite being in possession of overwhelming evidence that Mr. Mickell was and remained disabled under the terms of the Plan.

75. Defendant based its conclusion "primarily" on the incomplete, fundamentally flawed, contradictory, and unreliable reports of its' hired physicians, significantly misrepresenting the findings in said reports and ignoring the substantial and compelling evidence clearly evidencing Mr. Mickell's disability under the Plan.

76. By its actions to date, Defendant has failed to apply the "higher-than-marketplace quality standards" imposed on ERISA fiduciaries according to *Metro.Life Ins.Co. v. Glenn*, 128 S.Ct. 2343 (2008). Instead, Defendant has acted as Mr. Mickell's adversary and has failed to provide Mr. Mickell with a full and fair review of his claim.

77. Defendant is acting under a conflict of interest and in violation of its fiduciary obligations.

COUNT I

Action to Recover Plan Benefits, Enforce Rights Under the Plan & Clarify Entitlement to Plan Benefits Pursuant to 29 U.S.C. §1132 (a)(1)(B)

78. Plaintiff, Mr. Mickell, hereby incorporates by reference all of the allegations contained in paragraphs 1 through 77 of this Complaint, as if specifically recited herein.

79. Under the terms of the Plan, Defendant agreed to provide Mr. Mickell with benefits in accordance with the terms and conditions set forth within the Plan.

80. Defendant has failed and refused to pay Mr. Mickell the Plan benefits from September 17, 2013, to the present.

81. Mr. Mickell has satisfied all conditions precedent under the Plan and is thus eligible to receive benefits, as he has not waived or otherwise relinquished his entitlement to said benefits.

82. Defendant's failure to provide Mr. Mickell with benefits from September 17, 2013, through present was and is contrary to, and in violation of the terms of the Plan and Mr. Mickell's rights thereunder, and was and is contrary to clear, compelling and substantial medical evidence and other information that supports Mr. Mickell's right to benefits under the Plan.

83. Defendant suffers from an inherent conflict of interest because it pays Plan benefits from its own assets while also making the final determination as to whether to pay or deny claims for Plan benefits.

84. Defendant's failure to provide Mr. Mickell with benefits from September 17, 2013, through present was influenced by its inherent conflict of interest addressed in paragraph.

85. Defendant has failed to apply the provisions of the Plan consistently with respect to similarly situated Plan participants/claimants.

86. Defendant has failed to afford Mr. Mickell a full and fair review, and subjected Mr. Mickell to an unreasonable claims process according to 29 U.S.C. § 1133, and 29 C.F.R. § 2560.503-1.

87. The Plan benefits claim determination made by Defendant is arbitrary and capricious and in violation of ERISA.

88. Mr. Mickell is entitled to benefits under the Plan from September 17, 2013 and continuing.

89. Each monthly benefit owed to Mr. Mickell, from September 17, 2013, is a liquidated sum and became liquidated on the date the payment was due and payable.

90. Accordingly, Mr. Mickell is entitled to recover pre-judgment interest on each such payment.

91. As a direct result of Defendant's actions and inactions, Mr. Mickell has incurred significant costs and attorneys' fees.

92. Accordingly, Mr. Mickell is entitled to recover reasonable costs and attorneys' fees incurred, pursuant to ERISA, 29 U.S.C. § 1132(g)(1).

WHEREFORE, Plaintiff, MR. MICKELL, prays that this Honorable Court grant him the following relief:

- 1) A declaratory judgment herein declaring:
 - a. Plaintiff, Mr. Mickell, is Disabled pursuant to the language and within the meaning of the Plan;
 - b. Plaintiff, Mr. Mickell, shall be afforded the return of, or alternatively the financial relief from, any other employee plan benefits Plaintiff, Mr. Mickell, was promised he would receive while also qualifying as Disabled under the Plan, which he lost or was forced to bear the cost(s) of as a result of Defendant's, the Plans, wrongful denial of benefits;
 - c. Plaintiff, Mr. Mickell, shall be entitled to recoup all interest, costs, attorney's fees pursuant to 29 U.S.C. §1132(g)(1);
 - d. Plaintiff, Mr. Mickell, may return to this Court, upon motion, to seek further declaratory relief in the event that it becomes necessary;

- 2) A judgment against Defendant, the Plan, for all benefits due to Plaintiff, Mr. Mickell, under the terms of the Plan due and owing since the denial of benefits, plus any interest thereon;
- 3) An award to Plaintiff, Mr. Mickell, of his reasonable costs and attorneys' fees pursuant to 29 U.S.C. §1132(g)(1); and
- 4) Such other and further relief this Court deems proper and just.

Dated: October 16, 2015

Respectfully Submitted,

DI LAW GROUP
Attorneys for Plaintiff MICKELL
4151 Hollywood Boulevard
Hollywood, Florida 33021
Tel. (954) 989-9000
Fax. (954) 989-9999

/s/ Alicia Paulino-Grisham
Alicia Paulino-Grisham, Esq.
Florida Bar No.: 0676926
Email: alicia@dilawgroup.com